

**THE GIESZL FIRM**

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**THE UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

ALEX MADRID,

Plaintiff,

vs.

Paul Penzone, et al.,

Defendants.

**CASE NO: CV-2021-014673**

**PLAINTIFFS' SECOND  
AMENDED COMPLAINT**

**(JURY TRIAL DEMANDED)**

For his Complaint against Defendants, Plaintiff Alex Madrid ("Alex") alleges  
as follows:

**THE PARTIES**

1  
2  
3 1. At the time of the incidents at issue in this case, Alex resided in the  
4 County of Maricopa, State of Arizona, and was in the custody of the Maricopa County  
5 Sheriff's Office ("MCSO") at the Fourth Avenue Jail.  
6

7 2. Defendant Sheriff Paul Penzone ("Defendant Penzone") is the duly  
8 elected sheriff of Maricopa County, Arizona, and at all times referenced herein was  
9 acting under the color of law.  
10

11 3. Under Arizona law and the doctrine of respondeat superior, Defendant  
12 Penzone is vicariously responsible for the acts and omissions of employees committed  
13 in the scope and course of their employment at the MCSO and whose negligence caused  
14 Alex's injuries.  
15

16  
17  
18 4. Sheriff Penzone Penzone has a constitutional duty to "[t]ake charge of and  
19 keep the county jail ... " A.R.S. § 11-441.5. (Supp. 2010); accord A.R.S. § 31-101  
20 (2002). That the Sheriff, and each MCSO detention officer has a duty to protect  
21 detainees from excessive force and assault by officers. At all times relevant, Defendant  
22 Penzone was acting under color of law.  
23  
24  
25

26 5. Defendant Alger is a detention officer who, at all times relevant to this  
27

1 Complaint, was acting within the course and scope of his employment, and under color  
2 of law as a detention officer with the MCSO, and his actions and failures deprived Alex  
3 of his particular rights under of the United States Constitution. He is sued in his official  
4 and individual capacity.  
5  
6

7 6. Defendant Anderson is a detention officer who, at all times relevant to this  
8 Complaint, was acting within the course and scope of his employment, under color of  
9 law as a detention officer with the MCSO, and his actions and failures deprived Alex  
10 of his particular rights under of the United States Constitution. He is sued in his official  
11 and individual capacity.  
12  
13

14 7. Defendant Tolbert is a detention officer who, at all times relevant to this  
15 Complaint, was acting within the course and scope of his employment, under color of  
16 law as a detention officer with the MCSO, and his actions and failures deprived Alex  
17 of his particular rights under of the United States Constitution. He is sued in his official  
18 and individual capacity.  
19  
20

21 8. Other potentially responsible parties, including but not limited to, other  
22 detention officers, may be added as discovery establishes that any such officer acted  
23 with gross negligence and/or deliberate indifference to Alex's safety.  
24

## 25 **JURISDICTION AND VENUE**

1           9.     This case arises under Arizona common law, the Constitution of the State  
2  
3 of Arizona, and the 14<sup>th</sup> Amendment of the Constitution of the United States of America

4           10.    Defendants removed this case from Maricopa County Superior Court  
5 pursuant to 28 U.S. Code § 1441. This Court has original jurisdiction over Plaintiff's  
6  
7 claims brought under federal law pursuant to 28 U.S.C. § 1332 and the U.S. Const.  
8 art III, § 2. This court has supplemental jurisdiction over Plaintiff's claims brought  
9  
10 under Arizona state law pursuant to 28 U.S.C. § 1367,

11           11.    Venue is appropriate in this court as all defendants currently reside, or  
12 resided at all relevant times, within the State of Arizona and all acts that give rise to  
13  
14 this action occurred in Maricopa county, Arizona.

15           12.    Plaintiffs timely served a notice of claim pursuant to A.R.S. § 12- 821.01  
16 on Sheriff Paul Penzone, and Defendants Anderson and Tolbert, to which no Defendant  
17  
18 has responded, and the claim therefore is deemed denied by operation of statute.

19                   **FACTS APPLICABLE TO ALL COUNTS**

20           13.    On September 18, 2021, in 4A Housing Unit at 4th avenue Jail, in and  
21  
22 near cell 4A2.

23           14.    Alex was viciously assaulted by Defendants Anderson and Alger during  
24  
25 the process of his locking down in his cell. At no time during the lock down process  
26  
27 did Mr. Alex refuse to lock down.

1           15.     When Defendant Alger ordered Alex to “lock down”, Alex began to do  
2  
3 just that. He got up and walked from the table in the day room toward his cell.  
4  
5 Apparently believing Alex was not walking fast enough, Officer Alger told him,  
6  
7 “When I say lock down you lock the fuck down. When I say jump, you say how  
8  
9 high.”

10           16.     Alex paused, at his cell door, but at no time pushed or physically  
11  
12 confronted either Defendant Alger or Anderson. Alex entered his cell and turned  
13  
14 around, and Officer Alger suddenly and without provocation of any kind, used an  
15  
16 “impact push” to shove Alex into the back of his cell. Alex then just stood in the back  
17  
18 of the cell, not threatening either Defendant Alger or Anderson.

19           17.     Defendants Alger and Anderson then inappropriately and for no reason  
20  
21 followed Alex into his cell to “teach him a lesson”. However, the cell door unexpectedly  
22  
23 closed and locked behind the Defendants. They found themselves locked inside Alex’s  
24  
25 cell.

26           18.     Despite no aggression or threat from Alex, Defendants Alger and  
27  
28 Anderson then “took down” Alex in the cell. They smashed Alex’s face into the  
29  
30 concrete and his head and then pinned Alex’s upper body and arms on the floor. All of  
31  
32 this was wholly unnecessary. After the beating, Defendant Alger called for additional

1 officers to unlock the cell door and they removed Alex. Eventually, Alex was four  
2 pointed with chain restraints at his hands and feet.  
3

4 19. Defendants Alger and Anderson had no justification to use any force at  
5 the moment they attacked Alex, who was inside his cell, not resisting. There was no  
6 need for Defendants Alger and Anderson to do anything but close the cell door after  
7 Alex entered the cell.  
8

9  
10  
11 20. After the initial assault, and while Alex was restrained and on the floor in  
12 the hallway outside the cell, Defendant Tolbert tasered Alex for no reason and despite  
13 any threat. Use of the taser was wholly unjustified. After being tased, Alex was carried  
14 in “four point” restraints by his arms and legs.  
15

16 21. MCSO does not provide training at all or provides inadequate training in  
17 its Training Academy in the proper use of force, avoiding excessive force, and the use  
18 of de-escalation techniques to deal with detainees during routine interactions. The lack  
19 of training has created a pattern and practice of unnecessary violence and excessive  
20 force. All too often, as in Alex’s case, this means that ill-trained officers’ interactions  
21 with detainees include improper verbal exchanges followed by escalating—use of  
22 physical assault by the officer on detainees. Officers swear at detainees and use  
23  
24  
25  
26  
27  
28

1 vulgarity to insult and disrespect detainees, followed by a vicious kind of attack that  
2 befell Alex.

3  
4 22. Additionally, the MCSO has no (or has wholly inadequate) policies,  
5 procedures, and guidelines to assure the safety of detainees from excessive force by  
6 detention officers. There was no reason or justification for Officers Alger and Anderson  
7 to follow Alex into his cell and physically assault him. They should have simply locked  
8 him down by closing his cell door. Instead, they ended up locked in the cell with Alex  
9 because they were so “hot headed” as to forget that the cell door would close. Similarly,  
10 Officer Tolbert had no justification for tasing Alex, who was on the floor and cuffed  
11 up. He gratuitously joined in the “beat down” on Alex.

12  
13 23. The laws of the state of Arizona and the United States governing the use  
14 of force by detention officers were clearly established at the time the individual  
15 defendants assaulted Alex.

16  
17 24. Each of the individual Defendants knew the laws regarding use of force,  
18 and each defendant knew that the force each used was objectively unreasonable and  
19 amounted to nothing more than punishment.

20  
21 25. Each defendant continued to use force *after* Alex was restrained, was not  
22 resisting, and did not pose a threat to anyone.

1           26. As set forth above, each defendant's conduct was a cause-in-fact- and  
2 proximate cause of Alex's injuries.  
3

4           27. Further as set forth above, each individual defendant committee not only  
5 affirmative acts of excessive force but, also, participated in the other individual  
6 defendants' affirmative acts and failed to take any action to prevent the other defendants  
7 from injuring Alex. Thus, each officer was an integral participant in the violations  
8 committed by each other officer and the sequence of events that violated Alex's  
9 constitutional rights.  
10

11           28. At all times pertinent, each defendant was acting under color of law.  
12

13  
14                           **COUNT ONE**  
15                           **NEGLIGENCE AND GROSS NEGLIGENCE**  
16                           **(DEFENDANTS ANDERSON AND TOLBERT)**

17           29. The foregoing paragraphs are incorporated as though fully set forth herein.  
18

19           30. Defendants owed a non-delegable duty for the care, custody, and control  
20 of Plaintiff, a pretrial detainee in the custody of the MCSO. The duty for care, custody,  
21 and control includes the duty not to assault detainees as well as the duty to take  
22 reasonable steps to protect detainees from excessive use of force and assault by other  
23 detention officers.  
24

25           31. When they attacked and tased Alex, Defendants Alger, Anderson and  
26 Tolbert, knew or had reason to know that they were using excessive force and taking  
27



1 actions that placed Alex at unreasonable risk of bodily harm with a high probability that  
2 substantial harm would result.

3  
4 32. Each Defendant unreasonably failed to protect Alex from the unprovoked  
5 and unwarranted attack by each other Defendant and, instead, joined in the “beat down”.

6  
7 33. As a result of the Defendants’ gross negligence, Alex suffered injuries and  
8 pain and suffering that lasted for days.

9  
10 **COUNT TWO**  
11 **VICARIOUS LIABILITY**  
12 **(DEFENDANT-SHERIFF PENZONE)**

13  
14 34. The foregoing paragraphs are incorporated as though fully set forth herein.

15 35. Defendant Sheriff Penzone are vicariously liable through the doctrine of  
16 respondeat superior for the negligence and gross negligence of Defendants Anderson  
17 and Tolbert.

18  
19 **COUNT THREE**  
20 **ARTICLE 2, SECTIONS 2 AND 15 OF THE ARIZONA CONSTITUTION**  
21 **(ALL DEFENDANTS)**

22 36. The foregoing paragraphs are incorporated as though fully set forth herein.

23 37. Article 2, section 2 of the Arizona Constitution guarantees individuals due  
24 process of law, and Article 2, section 15 of the Arizona Constitution forbids cruel and  
25 unusual punishment. For the reasons set forth above, Defendants Penzone’s, Alger’s,

1 Anderson's, and Tolbert's conduct violated these provisions of the Arizona  
2 Constitution.  
3

4 38. As a direct and proximate result of Defendants' breach of these  
5 constitutional provisions, Alex was injured and suffered pain and mental and physical  
6 injury.  
7

8 )  
9

10 **COUNT FOUR**  
11 **42 U.S.C. § 1983 - EXCESSIVE FORCE**  
12 **(DEFENDANTS ALGER, ANDERSON, AND TOBERT**

13 39. The foregoing paragraphs are incorporated as though fully set forth herein.  
14

15 40. Defendants owed a non-delegable duty for the care, custody, and control  
16 of Plaintiff, a pretrial detainee in the custody of the MCSO. The duty for care, custody,  
17 and control includes the duty not to assault detainees as well as the duty to take  
18 reasonable steps to protect detainees from excessive use of force and assault by other  
19 detention officers.  
20

21 41. When they attacked and tased Alex, Defendants Alger, Anderson and  
22 Tolbert, knew or had reason to know that they were using excessive force and taking  
23 actions that placed Alex at unreasonable risk of bodily harm with a high probability that  
24 substantial harm would result.  
25

1           42. Each Defendant unreasonably failed to protect Alex from the unprovoked  
2  
3 and unwarranted attack by each other Defendant and, instead, joined in the “beat down”.

4           43. As a result of the Defendants’ gross negligence, Alex suffered injuries and  
5  
6 pain and suffering that lasted for days.

7  
8                           **COUNT FIVE**  
9                           **42 U.S.C. § 1983 – FAILURE TO TRAIN**  
                             **(DEFENDANT SHERIFF PENZONE)**

10          44. The foregoing paragraphs are incorporated as though fully set forth herein.

11  
12          45. Defendants Sheriff Penzone and ~~Maricopa County~~ failed to train or  
13 inadequately trained MCSO detention officers, including Defendants Alger, Anderson,  
14 and Tolbert, in proper management of detainees, including during lock down and other  
15 usual and recurring situations with which detention officers such as Defendants deal.

16  
17          46. This failure to train was the cause-in-fact and the proximate cause of  
18 Defendants Alger’s, Anderson’s, and Tolbert’s actions toward Alex, and deprived Alex  
19 of his right to be free from excessive force as required under the United States  
20 Constitution.

21  
22          47. Defendant Penzone was deliberately indifferent to the substantial risk that  
23 the lack of training and/or inadequate training would lead to and fail to prevent  
24 violations of law by MCSO detention officers, despite Defendants Penzone’s and  
25

1 Maricopa County's knowledge of the consequences of failure to adequately train  
2 detention officers.

3  
4 48. Defendants Penzone's failure to provide adequate training played a  
5 substantial part in bringing about or actually causing the injuries that Alex suffered.

6  
7 49. Defendants Penzone ~~and Maricopa County~~ had ample facts available to  
8 him through routine reports to have actual or constructive notice of MCSO detention  
9 officers' inadequate training and substantial likelihood that such training would result  
10 in detention officers' violation of the constitutional rights of Alex and others like him.

11  
12 **INJURIES AND DAMAGE**

13  
14 50. Alex was taken to medical after the assault. He suffered cuts and bruises  
15 over large areas of his body, and had body pain for days after the assault, owing both to  
16 the beating and being carried while "four-pointed."

17  
18 51. Alex was traumatized after the beating and to date continues to fear-being  
19 attacked when he enters his cell at "lock down" time.

20  
21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiffs pray for judgment against Defendants as follows:

23 A. For general damages, including but not limited to compensation for pain and  
24 suffering and emotional distress;

25  
26 B. For nominal damages as permitted under 42 USC §1983;

1 C. For punitive damages as permitted under 42 U.S.C. §1983 et seq..

2  
3 D. For attorney fees and costs;

4 E. For taxable costs and pre- and post-judgment interest to the extent permitted  
5 by law; and  
6

7 F. Such other relief as the Court deems just and proper.  
8 )  
9  
10  
11 )

12 **JURY DEMAND**

13 Plaintiff respectfully requests a trial by jury on all issues in this matter triable to  
14 a jury.  
15

16 Dated this 15<sup>th</sup> day of NOVEMBER 2022.  
17

18 **THE GIESZL FIRM**

19  
20 /s/Holly R. Gieszl  
21 3200 N. Central Ave. Ste. 1500  
22 Phoenix, AZ 85012  
23 Counsel for Plaintiff  
24  
25  
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**CERTIFICATE OF SERVICE**

On this 15th day of November 2022, the foregoing was filed with the Arizona District Court Clerk's Office using the CM/ECF System for filing, which will provide a Notice of Electronic Filing to all CM/ECF registrants.

/s/ Holly R. Gieszl  
Holly R. Gieszl